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# Opinion

**Editorial Board**

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OUR VIEW

## Washington CAFO plan offers silver lining

While we hesitate to hail any plan to increase state regulation as good news, the Washington Department of Ecology's plan to overhaul how it regulates the storage and spreading of manure at dairies and other concentrated animal feeding operations has a silver lining for producers.

Currently, DOE issues pollution discharge permits to only a small number of CAFOs. The permits combine federal and state laws and apply only to pollutants discharged to surface water.

The department has proposed giving dairies that discharge to groundwater only the option of obtaining a permit based solely on state law. That's good news. Because the permits are based on state laws they can't be challenged in federal court, the preferred venue of the environmental lobby.

DOE has also proposed exempting dairies with fewer than 200 mature cows, an acknowledgment that small dairies would have faced financial hardships in complying with the new rules.

By the state's estimation, the number of CAFO permits will increase as much as 20 fold — from about 10 today to as many as 200.

And it won't be cheap. A permit would cost 50 cents per animal unit, an adult cow and calf, up to a maximum of $1,670 a year in 2017.

Ecology rejected a push by environmental groups to make dairies line manure lagoons with synthetic material and drill wells to monitor pollution in groundwater.

Ecology says it's trying to balance protecting the environment with allowing the dairy industry to prosper.

None of this sits well with Washington environmentalists, who claim state officials haven't been tough enough on agriculture. They say they need to be able to sue in federal court to ensure accountability.

Please.

Washington farmers have an entirely different point of view about the severity of state regulation of agriculture. We find it unlikely that a state regulatory agency controlled by a governor who is actively vying to be the environmental conscience of the Pacific Northwest would go easy on polluters.

And even though producer groups are somewhat encouraged by what they know of the permitting scheme, they don't expect it to come without additional bureaucratic hassles.

"We're already regulated, and my concern is still the sheer volume of regulations this is going to add," Jay Gordon, Washington State Dairy Federation policy director, said. "It is an addition to what we've already been doing."

It's always healthy to be wary of new regulation. While having environmentalists lining up against it isn't enough to recommend the plan, it is the silver lining in a proposal that could have been much worse for producers.

OUR VIEW

## International trade agreements will avert chaos

Anyone who doubts the value of comprehensive international trade agreements should go to France.

That nation recently prohibited the importation of cherries from any nation that allows the use of the insecticide dimethoate. Mind you, the insecticide doesn't have to be used on cherries; just the fact that it could be used in the U.S. is sufficient for French officials to block U.S. cherries.

We won't comment on French politics. We cannot comment on something we don't understand. All we know is the French do not allow their farmers to use dimethoate, so they decided no one should.

The fact that U.S. cherry growers don't use it is immaterial, according to French reasoning. They figure that if French farmers can't use it, nobody can.

Because only a relative handful of U.S. cherries — about a half a million dollars worth last year — goes to France, the impact will likely be small.

Rik Dalvit/For the Capital Press

But what would happen of every country started making up its own trade rules, based on the vagaries of local preferences?

The answer is chaos. If Nation A won't allow a crop because a certain pesticide is allowed elsewhere, what's to stop Nations B, C and D from doing the same — and adding pesticides or practices to the list?

Soon U.S. farmers who ship their crop overseas would face a gridlock of prohibitions. So would other farmers around the world.

Before long, trade would grind to a halt. Ultimately, food shortages would emerge, but not until irreversible damage had been done to farmers and ranchers.

All because an agreement that sets the ground rules for trade does not exist.

It's not just about the French and cherries. U.S. olive oil is slapped with a $1,680 per ton duty when entering the European Union. Compare that to the $34 a ton duty the U.S. charges for European olive oil entering this country.

U.S. apples face a 7 percent duty when going to Europe, while EU apples face no duty when imported into the U.S.

Now in the negotiation stage is the Trans-Atlantic Trade and Investment Partnership between the U.S. and the European Union. Besides addressing market access and tariffs, it would harmonize regulatory standards, such as those related to food safety and the use of pesticides.

Many critics of the TTIP have emerged in Europe and elsewhere. They prefer the current system, which appears to rely on sticking it to the U.S. whenever and wherever possible.

Like the Trans-Pacific Partnership that was completed last winter, the TTIP will not be perfect. But it will be much better than the alternative, which is chaos.

## Wyden-Merkley Amendment: The dog that 'don't hunt'

By **LAWRENCE A. KOGAN**
For the Capital Press

**Guest comment**
Lawrence A. Kogan

During late April, the press announced how a proposed Senate Energy Bill amendment introduced in the U.S. Senate in February by Oregon Democratic Sens. Jeff Merkley and Ron Wyden would provide certain benefits to Klamath Basin irrigators.

The energy bill, including the amendment, S.A. 3288, passed the Senate on April 20 and its fate now rests with a Senate-House conference committee. S.A. 3288 would add new Section 4 "Power and Water Management" to the Klamath Basin Water Supply Enhancement Act of 2000.

### Amendment advantage

The Capital Press reported that if S.A. 3288 were passed, it would "allow the U.S. Bureau of Reclamation to help farmers in the basin deal with reduced water supplies as a result of future water-sharing agreements and to provide reduced-cost power for irrigation."

It even quoted local rancher Becky Hyde as emphasizing that the amendment would "put regulatory assurances for species back into place for agriculture (and) resurrect some of the power stuff (in the KBRA)."

Indeed, the Herald and News confirmed that "since the expiration of some key components of the Klamath Settlement Agreements in December," the Klamath Water Users Association has worked with the senators to ensure, among other things, that "the amendment authorizes measures first proposed as part of the 2010 Klamath Basin Restoration Agreement."

S.A. 3288, if adopted, would enable the Interior secretary to enter into agreements and contracts for purposes of aligning water supply and demand, mitigating environmental effects of irrigation, restoring Klamath Basin habitats and tribal fishery resources held in trust and reducing irrigation power costs.

Although S.A. 3288 ostensibly precludes the secretary from carrying out activities "that have not otherwise been authorized," it does not address the secretary's failure to secure congressional authorization or approval prior to entering into the Amended Klamath Hydroelectric Settlement Agreement and new Klamath Power and Facilities Agreement previously executed on April 6. It also fails to provide assurances that congressional review and authorization will be required before the secretary enters into any future interstate, intertribal and intergovernmental agreements.

### Proposed language

Many Oregon and California Klamath Basin residents and congressmen who objected to Interior Secretary Sally Jewel's execution of the Amended KHSA and new KPFA in circumvention of Congress believe that the Wyden-Merkley amendment could certainly benefit from additional language. We recently proposed the inclusion of clear language expressly requiring all such DOI-contemplated and previously executed agreements to be reviewed and ratified by Congress.

It has come to our attention, nevertheless, that the leadership of the KWUA and the Klamath Irrigation Project's Tulelake Irrigation District (represented by the same legal counsel) are opposed to the proposed language.

Apparently, KWUA and TID are concerned that this simple language change, if adopted, would prevent the DOI from executing the basin agreements (including the dam removal-focused Amended KHSA) and dispensing the welfare monies these groups have long counted on for politically supporting them.

Two additional S.A. 3288 provisions which have been represented as helping area farmers by "(enabling) the bureau to do certain upgrades of irrigation facilities" shed light on KWUA and TID thinking.

One such provision would authorize the Interior secretary to enter into one or more agreements with TID to reimburse up to 69 percent of the operation and maintenance ("O&M") costs TID incurs to run Pumping Plant D that expunges excess project waters TID receives from the Lost River and Klamath Irrigation District.

Another such provision would authorize the BOR to designate the KID's $10 million C Canal flume replacement contract as engendering emergency extraordinary operation and maintenance (EXM) work. The clear implication is that if S.A. 3288 is passed, the latter provision would render KID eligible to receive up to 35 percent BOR reimbursement of those costs.

This KID-focused S.A. 3288 provision, however, will not achieve this result because it curiously fails to designate the C Canal flume replacement as engendering "qualified" EXM work.

In other words, it does not designate KID as a qualified applicant for such treatment — i.e., as having corrected, during the past 10 years, all Category 1 O&M recommendations within 6 months of BOR identification, and all Category 2 O&M recommendations by the BOR's initial recommended date.

Recognizing this material omission, we recently proposed the inclusion of clear language expressly designating the KID C Canal flume replacement as a "Qualified EXM" work item. KWUA and TID are similarly opposed to this language change, because it would compel them to share their welfare monies with KID, which they are not inclined to do, especially if KID opposes dam removal.

Although KID has not taken an official position on dam removal, it is on record for having strenuously objected to the nontransparent and non-inclusive procedures by which KHSA parties previously proceeded to execute the Amended KHSA and new KPFA.

This distinction, however, did not prevent the BOR Mid-Pacific regional office director from conveying the same concern to KID counsel during April and May's C Canal flume replacement contract negotiations, thereby interlinking the 35 percent write-off with dam removal.

### Bottom line

In sum, a close reading of the Wyden-Merkley amendment reveals that, even if KID does not object to dam removal, KID would remain ineligible to receive the 35 percent write-off the amendment pretends to guarantee. S.A. 3288 is, thus, nothing more than a grand deception favoring government welfare payments for certain (KID) Klamath Basin farmers toeing the lame duck Obama administration's policy line.

Consequently, KID's execution of the BOR's one-sided C Canal flume replacement contract under duress and false pretense will not buy it this administration's loyalty. Instead, it will solidify BOR control over the Project, and bury the district, which is currently free from both Project construction and O&M debt, in more than $10 million of new debt.

It also will severely complicate, if not undermine, KID's newly initiated bold effort to ensure greater irrigator freedom and independence by first exploring and then pursuing title transfer with the incoming administration.

*Lawrence Kogan serves as counsel to the Klamath Irrigation District. He is managing principal of the Kogan Law Group P.C. in New York.*

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